THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.511 of 2007

Date: 30.07.2007

Between:
M/s.Raghava Constructions.

....Petitioner

and

The Government of A.P. and others.

....Respondents

O R D E R:

The petitioner is a Special Class Contractor, registered with the Government of Andhra Pradesh. It acquired eligibility to submit tenders for the works of very high magnitude. The Superintending Engineer, Irrigation Circle, Adilabad District, the third respondent herein, issued notification, dated 25.04.2006, inviting tenders for construction of an irrigation tank in Adilabad District. The petitioner submitted its tender enclosing the demand draft for the required amount of E.M.D. The tenders could not be opened within the stipulated time, for one reason or the other. At that stage, the petitioner encashed the demand draft. On account of this development, the registration of the petitioner stood suspended for a period of 12 months. The petitioner challenges the same.

It is urged that basically there was no necessity for the petitioner to submit a hard copy of the demand draft along with the tender, in view of various orders passed by the Government from time to time and even if it is assumed that there was no change in the procedure, the petitioner cannot be said to have violated the requirement, since the demand draft was kept alive for the stipulated period.

In the counter-affidavit filed on behalf of the respondents, it is pleaded that in addition to mentioning the particulars of demand draft, a tenderer is placed under obligation to submit the hard copy of the demand draft and as long as the same was with the department, the petitioner was not supposed to encash it before finalisation of the tenders.

The learned counsel for the petitioner submits that as regards the requirement to submit hard copies of the demand drafts for the E.M.D., there was substantial change in the form of Government Orders issued from time to time and he submits that there was absolutely no basis for the impugned action.

The learned Government Pleader for Irrigation, on the other hand, submits that the petitioner was under obligation to keep the demand draft alive and enforceable, till the process is concluded and admittedly, the demand draft was encashed much before that event. He contends that the suspension of the registration of the petitioner is automatic under Clause 3.1 of the tender conditions, once the violation is noticed.

The petitioner submitted its tender for the work specified in the tender notice, dated 25.04.2006. The demand draft for a sum of Rs.95,500/- was enclosed. The processing of tenders involved two stages. Technical bids to be opened on 15.06.2006 and the price bids, on 20.06.2006. However, these events were postponed to 21.08.2006 and 16.09.2006 respectively. One of the conditions is that apart from uploading the particulars of the demand draft,

representing E.M.D., the tenderer must submit the hard copy of the demand draft. The petitioner complied with this. However, it has encashed it afterwards. On this basis, the registration of the petitioner was suspended.

The Government stipulated the procedure to be followed while passing the tenders, through its Orders issued from time to time. In G.O.Ms.No.6 Irrigation & CAD (PW-Reforms) Department, dated 11.01.2005, the submission of hard copies of the demand drafts was dispensed with. However, this was changed by another order in G.O.Ms.No.245 Irrigation & CAD (PW-Reforms) Department, dated 30.12.2005. Thereafter, G.O.Ms.No.51 Irrigation & CAD (PW-Reforms) Department, dated 17.03.2006, was issued keeping the orders in G.O.Ms.No.245, dated 30.12.2005, in abeyance. The result was that it was not necessary for a tenderer to submit the hard copy of a demand draft. A further change in the policy took place in the form of G.O.Ms.No.155 Irrigation & CAD (PW-Reforms) Department, dated 23.08.2006. Through this, G.O.Ms.No.245, dated 30.12.2005, was restored. From the sequence of events, it is evident that the petitioner submitted the tender at a time when G.O.Ms.No.51, dated 17.03.2006, was in force. It means that it was not obligatory for a tenderer to submit the hard copy of the demand draft. Therefore, the petitioner was not under any legal obligation to submit the hard copy of the demand draft. All the same, the petitioner submitted hard copy.

Assuming that the petitioner was under any legal obligation

to submit the hard copy, it needs to be seen that the obligation subsists only till the stipulated time. The tender is almost in the form of a counter offer to the offer made through the tender notice. It is not in dispute that the validity of tender is 90 days. The offer made through the tender is valid for 90 days, unless it is extended. A tenderer has the option whether or not to keep his bid alive beyond the period of 90 days. The validity of the offer can be kept intact beyond the stipulated time, only with the consent of the tenderer. Admittedly, the consent of the petitioner was not obtained to keep the validity of the bid alive beyond 90 days. The respondents did not stick to the initial schedule fixed for opening of the tenders. They cannot penalize the petitioner on account of their own default, be it, in not adhering to the schedule of opening of tenders or in not obtaining the consent of the petitioner to keep his bid alive beyond the stipulated time of 90 days.

Viewed from any angle, the action of the respondents cannot be sustained in law. Therefore, the writ petition is allowed. There shall be no order as to costs.

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30.07.2007

kdl